

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR 6100

DATE COMPLAINT FILED: October 20, 2008

DATE OF NOTIFICATION:

DATE OF LAST RESPONSE:

DATE ACTIVATED: January 4, 2009

STATUTE OF LIMITATIONS: June 1, 2013

COMPLAINANT: Local 369, Utility Workers Union of America AFL-CIO

RESPONDENTS: Covanta Energy Corporation

Covanta Energy Corporation Political Action Fund

and Joanne Pagliuca, in her official capacity

as treasurer¹

RELEVANT STATUTES: 2 U.S.C. § 441b
 11 C.F.R. § 114.6

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: none

I. INTRODUCTION

Complainant Local 369, Utility Workers Union of America, AFL-CIO ("Local 369") alleges that Covanta Energy Corporation ("Covanta") solicited contributions from its employees for the benefit of its federal PAC, Covanta Energy Corporation Political Action Fund ("PAC"), in a manner that violated the regulatory requirements set forth in 11 C.F.R. § 114.6. Specifically, the complaint alleges Covanta solicited employees outside of its restricted class, but failed to

¹ Although the complaint makes no direct allegations against the PAC, CELA notified the PAC as a potential respondent. The response was submitted on behalf of the corporation only. In an abundance of caution, we make recommendations as to both the corporation and its PAC in order to ensure that the record is complete.

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1 notify the union of its intention to make such a solicitation and offered a "payroll deduction"
2 method of payment for employee contributions without offering that same payroll method to
3 employees for payment of union contributions, in violation of 11 C.F.R. §§ 114.6(c) and (e).
4 Because it appears that the solicitations alleged by Local 369 were made by Covanta on behalf of
5 its state, as opposed to federal, PAC, this allegation appears to be without merit. Local 369 also
6 alleges that Covanta solicited employees through its employee handbook, in violation of
7 11 C.F.R. §§ 114.6(c) and (e). Covanta directly rebuts the allegations in the complaint and
8 correctly asserts that the relevant paragraph in Covanta's employee handbook does not rise to the
9 level of a solicitation.

10 Based on the available information discussed below, we recommend that the Commission
11 find no reason to believe a violation occurred and close the file.

12 **II. FACTUAL SUMMARY**

13 Local 369 represents 128 employees working at a waste-to-energy plant owned and
14 operated by Covanta. In mid-2008, Local 369 became aware that Covanta was soliciting
15 donations from Covanta employees for its PAC. Local 369 alleges in its complaint that Covanta
16 solicited employees for contributions to Covanta's federal PAC, failed to notify Local 369 of its
17 intention to make such solicitations, and failed to make the "method" used by Covanta to
18 conduct the solicitation available to Local 369. Complaint at 1-2.

19 Local 369 then states in the complaint that Covanta was soliciting contributions to its
20 federal PAC through a paragraph in its Policy of Business Conduct ("employee handbook" or
21 "handbook"), given to new employees and certified annually by existing employees as having
22 been read. Complaint at 6. This paragraph states:

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Primarily in order to make contributions to federal political candidates or committees, we have established a federal political action committee (or "PAC"). Contributions to the PAC by eligible employees are voluntary. Whether an employee contributes or not results in no favor, disfavor or reprisal from Covanta. The PAC will comply with all related federal and state laws.

Complaint at 6; Attachment 11 at 11.

As support for this allegation, Local 369 asserts that the receipt of unitemized contributions reported from 2007 to 2008 by Covanta's federal PAC indicates successful solicitations of Covanta employees. In 2006, Covanta PAC reported no unitemized contributions. In 2007, Covanta PAC reported \$18 in unitemized contributions. In 2008, Covanta PAC reported \$3,355.53 in unitemized contributions. Complaint at 7. In its response, Covanta argues that the language in its employee handbook does not rise to the level of a "solicitation." Therefore, the act of distributing the handbook, without more, is not a violation of the Act as alleged in the complaint. Response at 7-8. Covanta further responds that it does offer members of the restricted class the option of contributing to its PAC via payroll deduction, which may account for the unitemized contributions. Response at 10-11.

III. ANALYSIS

Local 369's first allegation is that Covanta solicited employees for contributions to Covanta's federal PAC, failed to notify Local 369 of its intention to make such solicitations, and failed to make the "method" used by Covanta to conduct the solicitation available to Local 369. However, it appears that both Local 369 and Covanta agree that the solicitations Local 369 was referring to were actually solicitations for Covanta's state PAC, not its federal PAC. Complaint at 5-6; Attachment 10; Response at 10. After several communications between counsel for Local 369 and Covanta, Covanta informed Local 369 that while there had been a solicitation, it had in

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1 fact been a solicitation for a state PAC and, therefore, not subject to federal election law or
2 regulations. After being presented with this information, Local 369 did not attempt to rebut
3 Covanta's assertion, nor does it provide any independent information confirming a solicitation
4 by Covanta for its federal PAC. Because this allegation appears to be without merit, we
5 recommend the Commission find no reason to believe Covanta or Covanta PAC violated the Act
6 based on this allegation.

7 Instead, Local 369 alleges that Covanta was soliciting contributions to its federal PAC
8 through a paragraph in its employee handbook. Complaint at 6. Under the Act and Commission
9 regulations, a corporation or separate segregated fund ("SSF") established by a corporation may
10 solicit contributions to the SSF from the corporation's "restricted class," which consists of the
11 corporation's executive and administrative personnel, its stockholders, and their families.
12 2 U.S.C. 441b(b)(4); 11 C.F.R. 114.1(c) and 114.5(g). Solicitations beyond the restricted class
13 are generally prohibited. 2 U.S.C. § 441b(b)(4)(A).

14 In its interpretations of these provisions, the Commission has previously advised that a
15 communication regarding SSF activity is not a solicitation under section 441b where the
16 information provided would neither encourage readers to support the SSF activities nor facilitate
17 contributions to the SSF. Advisory Opinions 2000-7, 1991-3, 1988-2, 1983-38, 1982-65,
18 1980-65, and 1979-66. The Commission has determined that internal intranet postings and
19 newsletter articles would not be considered solicitations under 2 U.S.C. 441b when they
20 consisted only of limited informational statements without additional encouragement.
21 See Advisory Opinions 2000-7 and 1983-38. These latter communications, the Commission
22 concluded, merely convey information that might engender inquiry, rather than encouraging or
23 facilitating a contribution. *Id.*

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1 In contrast, the Commission determined in Advisory Opinion 1999-6 that a solicitation
2 would occur where a magazine article described the process for an employee to establish
3 automatic monthly deductions to an SSF, provided a telephone number to call for additional
4 information, and included several positive references to the convenience and advantages of using
5 the automatic deduction system. Likewise, the Commission concluded that a solicitation would
6 occur where a corporate newsletter described the fundraising activities of the SSF and contained
7 a quotation from the fund's chairman commending the enthusiasm of employees who had
8 participated in the fund's activities during the past year. Advisory Opinion 1979-13.

9 We believe that the language in Covanta's employee handbook does not rise to the level
10 of a solicitation because it does not encourage support for the PAC or facilitate the making of
11 contributions to the PAC. *See, e.g.*, Advisory Opinions 2003-14, 2000-7, 1991-3, 1922-2,
12 1983-38, and 1982-65. The language in Covanta's employee handbook appears to be merely a
13 statement that the PAC exists, not a solicitation. As such, we recommend the Commission find
14 no reason to believe Covanta violated the Act based on this allegation.²

15 Based on reasonable explanations by Covanta and the lack of any corroborating
16 information from Local 369, we recommend the Commission find no reason to believe Covanta
17 or Covanta PAC violated the Act in this matter.

18 IV. RECOMMENDATIONS

- 19
20 1. Find no reason to believe that Covanta Energy Corporation violated 11 C.F.R.
21 § 114.6;

² The premise posited in the complaint that the receipt of unitemized contributions is evidence of illegal solicitations appears to be an unwarranted assumption without corroboration. Further, Covanta acknowledges in its response that it offers members of its restricted class the option of contributing via payroll deduction. According to Covanta, this "method of deduction typically results in small contribution amounts (under \$200 in the aggregate for the calendar year) which accounts for the number of unitemized contributions."

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2. Find no reason to believe that Covanta Energy Corporation Political Action Fund and Joanne Pagliuca, in her official capacity as treasurer, violated 11 C.F.R. § 114.6;
3. Approve the appropriate letters.
4. Close the file.

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3/18/09
Date

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